79-952

Supreme Court, U. S.
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No.

In the

Supreme Court of the United States

OCTOBER TERM, 1979

EDDIE C. THOMAS,

Petitioner,

vs.

THE REVIEW BOARD OF THE INDIANA EMPLOYMENT SECURITY DIVISION, WILLIAM H. SKINNER, J. FRANK HALEY, and RALPH MILES, as members and as constituting the Review Board of the Indiana Employment Security Division,

and

BLAW-KNOX FOUNDRY & MACHINERY, INC.,

Respondents,

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

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BLAW-KNOX FOUNDRY & MACHINERY, INC.,

Respondents,

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

The petitioner, Eddie C. Thomas, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of Indiana entered in this proceeding on July 18, 1979.

OPINIONS BELOW

On February 24, 1976, the referee of the Indiana Employment Security Division entered his decision on the instant case. The Review Board of the Indiana Employment Security Division affirmed the referee's decision on November 29, 1976. Petitioner appealed and on October 26, 1978 the Court of Appeals of Indiana rendered a decision favorable to the appellant, which decision is reported in *Thomas* v. *Review Board of Indiana Security Division* ..... Ind. App. ....., 381 N.E.2d 888 (1978). Rehearing was denied in an unpublished order of November 22, 1978. The opinion of the Supreme Court of Indiana entered on July 18, 1979, is reported at ..... Ind. ....., 391 N.E.2d 1127 (1979). A petition for rehearing was subsequently denied in an unpublished order of September 20, 1979.

JURISDICTION

The judgment to be reviewed is the July 18, 1979, opinion and order of the Supreme Court of Indiana, which reversed the decision rendered by the Court of Appeals of Indiana on the instant case on October 26, 1978. Jurisdiction is conferred on this Court by 28 U.S.C.A. §1257 (3).

QUESTION PRESENTED FOR REVIEW

Whether the application of the disqualifying provisions of the Indiana Employment Security Act, Indiana Code 22-4-15-1, (Burns Code Ed., 1974) to the petitioner, a Jehovah's Witness, constitutes a denial of his First Amendment right to the free exercise of religion when he voluntarily terminated his employment in an armament factory because his religious beliefs prevented him from

participating in the production of armaments or in any war related activities.

STATUTES AND AMENDMENTS

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Constitution of the United States, Amendment I

"With respect to benefit periods including extended benefit periods established subsequent to July 6, 1974, and before July 3, 1977, an individual who has voluntarily left his employment without good cause in connection with the work or who was discharged from his employment for just cause shall be ineligible for waiting period or benefit rights for the week in which the disqualifying separation occurred and until he has subsequently earned remuneration in employment equal to or exceeding the weekly benefit amount of his claim in each of ten (10) weeks. The weeks of a disqualification period remaining at the expiration of an individual's benefit period will be carried forward to an extended benefit period or to the benefit of a subsequent claim only if the first week of such extended benefit period or subsequent benefit period falls within ten (10) consecutive weeks from the beginning of the disqualification period imposed on the prior claim."

Indiana Employment Security Act, Chapter 15, Section 1, Indiana Code 22-4-15-1, (Burns Code Ed., 1974).

STATEMENT OF THE CASE

The petitioner, Eddie C. Thomas, was employed as a chainman hooker by respondent, Blaw-Knox Foundry and Machinery, Inc. (hereinafter referred to as Blaw-Knox) for approximately a year. He performed his job satisfactorily in the Roll Foundry, and when this division of the company was permanently closed in November, 1975, he was transferred to another department where he began working in the production of turrets for tanks. This division was also know as the turret line. Upon commencing his job in that department, the petitioner, a Jehovah's Witness, realized that his new job directly involved the manufacture of armaments, an activity strictly prohibited by his religion. After realizing that all other departments of the company were engaged in the production of items used in the advancement of war, and after unsuccessfully attempting to obtain a law-off, the petitioner voluntarily terminated his employment with Blaw-Knox in accordance with his religious beliefs. (App. 3a)

Thomas filed a claim for unemployment compensation benefits on November 6, 1975, the same day he quit his job. An administrative hearing before a referee was held on January 27, 1976; petitioner appeared and testified without counsel. Petitioner was first represented by counsel at the Court of Appeals level. In his decision, the referee concluded that the petitioner "did quit due to his religious convictions, but that this was not good cause in connection with the work." (App. 3a) A timely appeal to the Indiana Employment Security Division Review Board (hereinafter referred to as Board) was filed. In its decision of November 29, 1976, the Board also concluded that petitioner "left his employment voluntarily because his religious beliefs as a Jehovah's Witness would

not allow him to continue to work producing arms, after being transferred from his original department which was not engaged in the manufacture of items used in the advancement of war." (App. 5a) However, the Board affirmed the referee's decision.

At this point, the Legal Aid Society of Gary, Inc., entered the case and an appeal was filed before the Court of Appeals. Appellant Thomas alleged that the Board had erred in concluding that he quit his employment without good cause in connection with the work, that the denial of unemployment benefits in this case violated his First Amendment right to the free exercise of religion, and that there was no compelling state interest to justify such an infringement. In the October 26, 1978 decision, the Court of Appeals held:

> "Under the authority of *Sherbert,* we are compelled to hold that the disqualifying provision of I.C. 22-4-15-1 (Burns Code Ed. 1974), as it applies to Thomas, casts an impermissible burden on his First Amendment guarantee to the free exercise of his religion. Because the Board has conceded that no "compelling state interest" exists to justify such a burden, we must hold that the statute is unconstitutional as applied to Thomas.
>
> The judgment is reversed and the cause remanded with directions that the Board enter an award not inconsistent with this opinion." (App. 19a)

A Petition for Rehearing was denied without opinion on November 22, 1978. (App. 25a)

The Indiana Court of Appeals decision came before the Supreme Court of Indiana on a Petition to Transfer filed by the Board in a 3-2 decision. In a decision rendered on July 18, 1979, the Court reversed the Appellate

Court. Associate Justice Pivarnik delivered the opinion of the Court, two Justices concurring with him. Justices Hunter and DeBruler dissented and wrote separate opinions. The Supreme Court majority opinion concluded that Thomas' reasons for quitting were personal and subjective, not objectively related to the employment; that there was no evidence to show that he was under pressure to quit, and that he was not required to violate a cardinal tenet of his religion. Therefore, the Court held that the denial of unemployment compensation to Thomas did not violate his right to the free exercise of his religion. A Petition for Rehearing was denied on September 20, 1979.

Eddie C. Thomas now timely files this Petition for a Writ of Certiorari and prays that a writ issue on the following grounds:

REASONS FOR GRANTING THE WRIT

Petitioner respectfully submits that his petition should be granted because the Supreme Court of Indiana "has decided a federal question of substance in a way in conflict with applicable decisions of this court." Rule 19(1)(b), Rules of the Supreme Court. In upholding the denial of unemployment benefits to the petitioner, who terminated his employment because of his religious convictions, the Indiana Court clearly departed from the holding in *Sherbert* v. *Verner,* 374 U.S. 398, 83 S.Ct. 1790 (1963), which controls this case.

In *Sherbert,* a Seventh Day Adventist was discharged by her employer for refusing to work on Saturdays, her Sabbath. When she was unable to find employment because of her religious objections against Saturday work, she filed a claim for unemployment benefits. The South Carolina Employment Security Commission denied her claim on the basis that she failed, without good cause, to accept otherwise suitable work. The state Supreme Court affirmed that decision and Mrs. Sherbert appealed to the United States Supreme Court, contending that the disqualification abridged her First Amendment right to the free exercise of religion.

In *Sherbert* this Court stated:

> "Plainly enough, appellant's conscientious objection to Saturday work constitutes no conduct prompted by religious principles of a kind within the reach of state legislation. If, therefore, the decision of the South Carolina Supreme Court is to withstand appellant's constitutional challenge, it must be either because her disqualification as a beneficiary represents no infringement by the State of her constitutional rights of free exercise, or because any inciden-

> tal burden on the free exercise of appellant's religion may be justified by a 'compelling state interest in the regulation of a subject within the State's constitutional power to regulate. . . .' *NAACP* v. *Button*, 371 U.S. 415, 438, 83 S.Ct. 328, 341, 9 L.Ed. 2d 405." *Id.*, 83 S.Ct. at 1793."

A majority of the Court was of the view that her disqualification imposed a burden on the free exericse of her religion:

> "Here not only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakable. The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship." *Id.* 83 S.Ct. at 1794.

Because the State offered no persuasive "compelling interest" to justify this infringement, the Court held that for constitutional reasons the state was required to exempt her from its Monday through Saturday availability requirement.

Relying on this analysis, this Court recently held unconstitutional a Tennessee statutory provision disqualifying ministers as candidates for delegates to the State Constitutional Convention because it violated appellant's First and Fourteenth Amendment rights. *McDaniel* v. *Paty*, 98 S.Ct. 1322 (1978). Chief Justice Burger delivered the opinion of the majority holding the following:

> "Yet under the clergy disqualification provisions, McDaniel cannot exercise both rights simultaneously because the State has conditioned the exercise of one on the surrender of the other. Or, in James Madison's words, the State is "punishing a religious profession with the privation of a civil right." 5 The Writings of James Madison 288 (G. Hunt ed. 1904). In so doing, Tennessee has encroached upon McDaniel's right to the free exercise of religion "[T]o condition the availability of benefits (including access to the ballot) upon this appellant's willingness to violate a cardinal principle of (his) religious faith (by surrendering his religiously impelled ministery) effectively penalizes the free exercise of (his) constitutional liberties." *Sherbert* v. *Verner*, 374 U.S. 398, 406 83 S.Ct. 1790, 1795, 10 L.Ed. 2d 965 (1963)."

As in *Sherbert,* supra, the Court found no compelling state interest to justify an infringement on McDaniel's First Amendment rights.

The decision of the Supreme Court of Indiana is in direct conflict with *Sherbert* and *McDaniel* and must be reversed. The decision reached in Thomas' case, which presented the same federal question involved in *Sherbert* and *McDaniel* must not stand because it erroneously decides an issue already decided by this Court.

Petitioner's case presents a situation strikingly similar to *Sherbert.* After a year of satisfactory work in the Roll Foundry, for which department he was specially hired, he was transferred to another division where the job assigned to him was in direct and serious conflict with his religious beliefs as a Jehovah's Witness. In *Sherbert,* the petitioner's religious convictions prevented her from working on Saturday; in the instant case the petitioner's religious beliefs prohibit work with armaments or items

used in the advancement of war. As in *Sherbert,* and *McDaniel,* petitioner herein is forced to make a choice, which has been held constitutionally impermissible because it unduly burdens petitioner's right to free exercise. *Sherbert,* supra, at 1794.

Petitioner Thomas was faced with that unconstitutional choice. The referee of the Indiana Employment Security Division concluded that *"he did quit for religious reasons."* (App. 3a) The Review Board also determined that Thomas voluntarily *"left his employment because his religious beliefs would not allow him to continue to work producing arms, after being transferred from his original department which was not engaged in the manufacture of items used in the advancement of war."* (Emphasis supplied, App. 5a).

Since the trier of facts concluded that petitioner Thomas lost his employment because of his religious beliefs, *Sherbert* and *McDaniel* require reversal of the decision of the Supreme Court of Indiana. In his dissenting opinion, Justice Hunter noted the following:

> "An inquiry by this Court into whether Thomas' convictions are religious would be improper in this case. As stated above, the facts as found by the referee, and as adopted by the Review Board, indicate that Thomas did indeed quit his job due to his religious convictions. Furthermore, this Court should not pick apart a religious adherent's beliefs because he is struggling" with his position or because his beliefs are not eloquently stated. Neither should we distinguish between literal and interpretative readings of religious scriptures nor distinguish among so called cardinal tenets" of various religions." (App. 42a)

and

> "We are dealing here with a person's action pursuant to his religious beliefs, and cannot properly tell a litigant that he has misinterpreted his own beliefs." (App. 43a).

Under the circumstances, the application of Indiana Code 22-4-15-1 (Burns Code Ed. 1974) to the petitioner infringes upon his First Amendment rights. Once such conclusion is reached, benefits must be awarded unless the abridgment of the First Amendment rights is justified by a compelling state interest. In its oral argument before the Indiana Court of Appeals, the Review Board conceded that in the event the Court found a burden on Thomas' First Amended rights, no "compelling state interest" could be offered in justification. (App. 19a).

This analysis was the basis for the decision rendered by the U.S. District Court for the Western District of Kentucky in *Lincoln* v. *True,* 408 F.Supp. 22, 1975, where a Jehovah's Witness quit her employment with a tobacco products manufacturer for religious reasons and was denied unemployment benefits for quitting without good cause. Following the *Sherbert* decision, the Kentucky Court determined that the denial of benefits where termination of work was the result of religious beliefs constituted a violation of her First Amendment rights.

In the instant case, as in *Sherbert, McDaniel* and *Lincoln,* the state has advanced no compelling interest to justify its infringement on constitutional rights of the highest order. Even in the event they had a compelling state interest, the teachings of *Sherbert* and *Wisconsin* v. *Yoder,* 406 U.S. 205, 92 S.Ct. 1526 (1972) are that the state's goals must be analyzed in terms of the burden

imposed upon petitioner's free exercise right. Absent a compelling state interest, we must conclude that the burden placed on Thomas' constitutional rights is impermissible.

Because the federal question presented is of the utmost importance, and the Indiana Supreme Court has decided it in a way directly in conflict with decisions of this Court, petitioner respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Indiana Supreme Court.

Respectfully submitted,

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APPENDIX A

INDIANA EMPLOYMENT SECURITY DIVISION
Appellate Section
10 North Senate Avenue
Indianapolis, Indiana 46204

DECISION OF APPEALS REFEREE

In the Matter of:

CLAIMANT:
EDDIE C. THOMAS
744 Caroline Street
Gary, Indiana 46402

EMPLOYER:
BLAW-KNOX
4407 Railroad Avenue
East Chicago, Indiana

Claim No. 2/5 10-0
Rec'd 12-15-75
Soc. Sec. No. 311-40-9393
Deputys Determination 12-11-75
Hearing Date 1-27-76
Referee Marlowe
Case No. 75-A-12221
Date Claim Filed 11-6-75
Appeal Filed 12-11-75
Decision Mailed Mar. 3, 1976
Reporter Cassette

NOTE: The following decision is final unless the claimant, or the employer involved, if any, appeals therefrom to the Review Board in the manner and form provided by law and repulation within 15 days after the mailing date hereof.

Statutory Provisions Involved: Indiana Code 1971, Title 22, Article 4, Chapter 15-1 of the Indiana Employment Security Act. (See attached page.)

Summary of Case: The claimant was heard on appeal from a deputy's initial determination of eligibility, dated December 11, 1975, which determination held that on or about November 6, 1975, claimant voluntarily left his employment without good cause in connection with the work; therefore, the statutory penalty as set forth in Chapter 15, Section 1 of the Indiana Employment Security Act as imposed. Claimant appeared in person at the hearing held in Gary, Indiana, on January 27, 1976. The employer, although duly notified of time and place hearing would be held, did fail to appear.

Findings and Conclusions: The claimant worked for this employer for approximately one year concluding his employment on November 6, 1975. The claimant worked for this employer as a chairman "hooker" and received approximately $4.52 per hour as remuneration for his services. The uncontradicted evidence indicates the claimant did voluntarily leave his position after requesting a layoff from the company. The evidence reveals that the claimant on his initial application form for employment indicated a religious belief of Jehovah Witness, and indicated his hobbies to be bible studying and bible reading. Claimant, upon the recommentation of another Jehovah Witness, was hired especially into the "Roll Foundry" where claiman performed as a satisfactory employee. The evidence reveals that approximate two to three weeks prior to the claimant's date of leaving, the "Roll Foundry" was closed permanently and claimant was transferred to the terret line. Claimant, at this time, real realized that all of the other functions at The Blaw-Knox company were engaged in producing arms for the Armanent Industry. Claimant's religious beliefs specifically exempts claimant from producing or aiding in the manufacture of items used in the advancement of war. Claimant continually searched for a transfer to another department which would not be so armament related; however, this

did not materialize, and prior to the date of his leaving, claimant requested a layoff, which was denied; and on November 6, 1975, *claimant did quit due to his religious convictions.* The evidence further reveals that the other Jehova Witness, who claimant used as a reference to gain his job, continued to work for the Blaw-Knox company in spite of his armament producing capability, and found a less strict interpretation of the Jehovah Witness principles, which claimant could not morally accept. The referee notes the *claimant did not knowing his special circumstances, seek out information concerning the Blaw-Knox company and its armament producing functions prior to his employment.* From the foregoing findings it is concluded that the claimant did voluntarily leave his position on November 6, 1975. *It is further concluded by the referee that the claimant has the burden of going forward and establishing good cause in connection with the work, and that claimant has not done so in this case.* It is the conclusion of the referee that it was the *claimant who placed special restrictions on his working capabilities, and that it was also the claimant who sought out the job at Blaw-Knox,* not the employer who sought out the claimant; therefore, the employer hired the claimant in spite of his special circumstances. *The action of the company leaves the referee with the conclusion that the claimant wanted to work for this employer when the claimant knew of his special circumstances and yet, in light of that, still requested employment whereupon the employer did grant set employment.* Therefore, *the referee findings no logic to the proposition that the employer in anyway contributed to the claimant's voluntarily leaving thereby establishing good cause in connection with the work.* Therefore, the referee concludes, the claimant did voluntarily leave his employment without good cause in connection with the work.

Decision: The determination of the deputy is affirmed. Statutory penalty is imposed.

Dated this 24th day of February, 1976.

Charles F. Marlowe, Referee

dc

INDIANA EMPLOYMENT SECURITY DIVISION
10 North Senate Avenue
Indianapolis, Indiana 56204

DECISION OF REVIEW BOARD

In the Matter of:

CLAIMANT:
Eddie C. Thomas
744 Carolina Street
Gary, Indiana 46402

EMPLOYER:
Blaw-Knox Foundry & Machinery, Inc.
4407 Railroad Avenue
East Chicago, Indiana 46314

Case No. 76-R-468

Claim No. 2/5 10-0

Soc. sec. No. 311-40-9393

Hearing Date 11-9-76

Date of Appeal 3-5-76

Transcript Reveived 4-26-76

Decision Mailed 11-30-76

Note: This decision shall be final unless the claimant or employer files notice of intention to appeal to the Indiana Court of Appeals within fifteen (15 days after the mailing date hereof. (Indiana Employment Security Act, Chap. 17, Sec. 11 [IC 1971, 22-4-17-11] et seq., Burns 1959 Supp., Sec. 52-1542j.)

Statutory Provision Involved: Indiana Employment Security Act (hereinafter referred to as the Act), IC 1971, 22-4-15-1.

Case History - Source of Appeal: The claimant appealed to the Review Board from the referee decision mailed March 3, 1976, which affirmed the deputy's initial determination of December 11, 1975, holding that claimant quit voluntarily without good cause in connection with work; that his benefit rights were suspended effective

week ending November 8, 1975, until he has arned $92 or more in each of ten weeks; and that his maximum benefit amount was reduced by 25% or $264. Both parties hereto requested a review of the record in lieu of appearance at the Review Board hearing on November 9, 1976.

The point in dispute before the Review Board is whether claimant left his employment voluntarily without good cause in connection with work within the meaning of Chapter 15-1 of the Act.

Statement of Facts: The evidence of record indicates that claimant worked for this employer approximately one year prior to November 6, 1975, his last workday, as a chainman "hooker" at a final hourly pay rate of $4.52; and that he left his employment voluntarily because his religious beliefs as a Jehovah Witness would not allow him to continue to work producing arms, after being transferred from his original department which was not engaged in the manufacture of items used in the advancement of war.

Findings and Conclusions: The Review Board now adopts, by reference, the findings and conclusions of the referee in Case No. 75-A-12221 in the decision mailed March 3, 1976.

Decision: The decision of the referee in Case No. 75-A-12221 is hereby affirmed this 29 day of November, 1976.

Review Board
/s/ William H. Skinner, Chairman
/s/ J. Frank Hanley II, Member
/s/ Ralph F. Miles, Memeber

STATE OF INDIANA
217 State House
Indianapolis 46204

No. 2-1276A491

Eddie C. Thomas v. Review Board of the Indiana Employment Security Division and Blaw-Knox Foundry & Machinery Inc.

You are hereby notified that the Indiana Court of Appeals has on this day issued the closed Opinion.

Please acknowledge receipt of this notice in order that our records may show that you have been notified of this action.

Witness my name and the seal of said Court, this 26th day of October, 1978.

/s/ Billie R. McCullough
Clerk Supreme Court and Court of Appeals

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In The

COURT OF APPEALS OF INDIANA
Second District

EDDIE C. THOMAS,

Appellant,

vs.

REVIEW BOARD OF THE INDIANA EMPLOYMENT SECURITY DIVISION, WILLIAM H. SKINNER, J. FRANK HALEY, and RALPH MILES, as Members and as constituting the Review Board of Indiana Employment Security Division,

and

BLAW-KNOX FOUNDRY & MACHINERY, INC.,

Appellees.

No. 2-1276 A 491

Appeal from the Decision of the Review Board of the Indiana Employment Security Division

SULLIVAN, J.

Eddie C. Thomas appeals from a decision of the Employment Security Review Board (the Board) denying his claim for unemployment compensation. The relevant facts are not in dispute and disclose that Thomas voluntarily terminated his employment for religious reasons. Thus, the reason for termination is not in dispute and is inextricably tied to First Amendment considerations.

In affirming the referee's decision, the Board adopted "by reference" the referee's Findings and Conclusions as follows:

> "Findings and Conclusions: The claimant worked for this employer for approximately one year concluding his employment on November 6, 1975. The claimant worked for this employer as a chainman 'hooker' and received approximately $4.52 per hour as remuneration for his services. The uncontradicted evidence indicates the claimant did voluntarily leave

his position after requesting a layoff from the company. The evidence reveals that the claimant on his initial application form for employment indicated a religious belief of Jehovah Witness, and indicated his hobbies to be bible studying and bible reading. Claimant, upon the recommendation of another Jehovah Witness, was hired especially into the 'Roll Foundry' where claimant performed as a satisfactory employee. The evidence reveals that approximately two to three weeks prior to the claimant's date of leaving, the 'Roll Foundry' was closed permanently and claimant was transferred to the terret [sic] line. Claimant, at this time, realized that all of the other functions at The Blaw-Knox company were engaged in producing arms for the Armanent Industry. Claimant's religious beliefs specifically exempts [sic[claimant from producing or aiding in the manufacture of items used in the advancement of war. Claimant continually searched for a transfer to another department which would not be so armament related; however, this did not materialize, and prior to the date of his leaving, claimant requested a layoff, which was denied; and on November 6, 1975, *claimant did quit due to his religious convictions.* The evidence further reveals that the other Jehovah Witness, who claimant used as a reference to gain his job, continued to work for the Blaw-Knox company in spite of his armament producing capability, and found a less strict interpretation of the Jehovah Witness principles, which claimant could not morally accept. The referee notes the claimant did not, knowing his special circumstances, seek out information concerning the Blaw-Knox company and and its armament producing functions prior to hi employment."

"From the foregoing findings it is concluded that the claimant did voluntary leave his position on November 6, 1975. It is further concluded by the referee that the claimant has the burden of going for-

ward and establishing good cause in connection with the work, and that the claimant has not done so in this case. It is the conclusion of the referee that it was the claimant who placed special restrictions on his working capabilities, and that it was also the claimant who sought out the job at Blaw-Knox, not the employer who sought out the claimant; therefore, the employer hired the claimant in spite of his special circumstances. The action of the company leaves the referee with the conclusion that the claimant wanted to work for this employer when the claimant knew of his special circumstances and yet, in light of that, still requested employment whereupon the employer did grant set employment. Therefore, the referee finds no logic to the proposition that the employer in anyway contributed to the claimant's voluntarily leaving thereby establishing good cause in connection with the work. Therefore, the referee concludes, the claimant did voluntarily leave his employment without good cause in connection with the work." (Emphasis supplied).

We are squarely presented with the question whether the disqualifying provision of the Indiana Statute, I.C. 22-4-15-1 (Burns Code Ed. 1974),[1] violates Thomas' First Amendment guarantee to the free exercise of his religion.[2]

Thomas places principal reliance on *Sherbert* v. *Verner* (1963) 374 U.S. 398, 83 S.Ct. 1790 and *Lincoln* v. *True* (W.D. Ky. 1975) 408 F.Supp. 22 to support his claim for benefits.

---

[1] "[A]n individual shall be ineligible for [benefits] if it is determined that he voluntarily left his employment without good cause in connection with the work . . . "

[2] The Religion Clauses of the First Amendment are applicable to the states through the due process clause of the Fourteenth Amendment. *Cantwell* v. *Connecticut* (1940) 310 U.S. 296, 60 S.Ct. 900.

In *Sherbert,* a Seventh Day Adventist, unable to find employment because of her conscientious scruples against Saturday work, filed a claim for unemployment benefits. The South Carolina Employment Security Commission denied her claim on the basis that she failed, without good cause, to accept otherwise suitable work. The state Supreme Court affirmed that decision and Sherbert appealed to the United States Supreme Court, contending that the disqualification abridged her First Amendment right to the exercise of religion.

The Supreme Court analyzed Sherbert's claim in the following context:

> "Plainly enough, appellant's conscientious objection to Saturday work constitutes no conduct prompted by religious principles of a kind within the reach of state legislation. If, therefore, the decision of the South Carolina Supreme Court is to withstand appellant's constitutional challenge, it must be either because her disqualification as a beneficiary represents no infringement by the State of her constitutional rights of free exercise, or because any incidental burden on the free exercise of oppellant's religion may be justified by a 'compelling state interest in the regulation of a subject within the State's constitutional power to regulate. . . .' *NAACP* v. *Button,* 371 U.S. 415, 438, 83 S.Ct. 328, 341, 9 L.Ed.2d 405." *Id.,* 83 S.Ct. at 1793.

A majority of the Court was of the view that her disqualification imposed a burden on the free exercise of her religion:

> "Here not only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakable. The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of

> her religion in order to accept work, on the other hand. Government imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship." *Id.*, 83 S.Ct. at 1794.

Because the State offered no persuasive "compelling interest" to justify this infringement, the Court held that for constitutional reasons the state was required to exempt her from its Monday through Saturday availability requirement.[3]

The *Lincoln* case, *supra,* applied the *Sherbert* holding in a slightly different context—a context identical to that before us. In *Lincoln,* the claimant voluntarily terminated her employment with a tobacco company "because elders of Jehovah's Witnesses, a . . . sect of which she had been a member for 15 years, informed her that anyone using tobacco or working with tobacco products was violating the Will of God, and unless she resigned, she would be expelled from the fellowship of Jehovah's Witnesses." *Id.* at 22. The Kentucky Unemployment Insurance Commission denied her claim to benefits, calling her action a vountary quitting without good cause. The District Court cited *Sherbert* as controlling and held that the denial of benefits was in violation of the claimant's First Amendment right to the free exercise of her religion and ordered that benefits be paid.

The Board here contends that neither *Sherbert* nor *Lincoln* control disposition of the present appeal.

The Board did not address *Lincoln* in its brief, but during oral argument observed that *Lincoln* had misstated

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[3] In so doing, the Court rejected the offered justification that fraudulent claims by persons feigning religious objections would dilute the unemployment compensation fund and that the administrative inconvenience resulting from an exemption would render the entire statutory scheme unworkable. *Sherbert, supra,* 83 S.Ct. at 1795-1797.

the holding of *Sherbert,* on which it relied. It is true that *Lincoln* erroneously described Sherbert as having been discharged instead of having been "unavailable for work." Accordingly, this distinguishing factor will be hereinafter discussed but its consequence is significant only to the extent that we do not have available a reasoned analysis of the distinction between cases involving "voluntary quit" as opposed to "availability for work" or "discharge."

The Board contends that the distinction between disqualification standards under each statutory provision—between good cause for quitting, I.C. 22-4-15-1, *supra,* and good cause for refusing work, IC. 22-4-15-2 (Burns Code Ed. 1974)—makes *Sherbert* distinguishable. We agree that the distinction exists and that the standards for entitlement to benefits in a "voluntary quit" case are more strict than those in a "work availability' case. See *Gray* v. *Dobbs House, Inc.* (2d Dist. 1976) Ind.App., 357 N.E.2d 900. However, no explanation is offered by the Board why this should preclude application of the *Sherbert* analysis to Thomas' claim. Indeed, the Board argues merely that there *is* a distinction and that Thomas' disqualification "was simply a determination that objective, religiously neutral standards were not met."

We think it settled that

> "[e]ven as to neutral prohibitory or regulatory laws having secular aims, the Free Exercise Clause may condemn certain applications closing with imperatives of religion and conscience, when the burden on First Amendment values is not justifiable in terms of the Government's valid aims." *Gillette* v. *United States* (1971) 401 U.S. 437, 91 S.Ct. 828, 842.

Thomas is challenging the "neutral" disqualifying provisions *as they apply to him.* If the denial of benefits does not "burden" his free exercise rights, compensation may properly be denied. *Cf. Sherbert.* But if we discern an infringement of such rights, unemployment compensa-

tion must be awarded unless the abridgment is justified by a "compelling state interest." We find no basis in *Gray, supra,* which precludes such result.

Our task in applying the *Sherbert* standards to Thomas' claim has been focused by the Board's concession at oral argument that should we find a "burden" on Thomas' free exercise rights, no "compelling state interest" can be offered in justification.

We must therefore examine the question "whether the disqualification for benefits imposes any burden on the free exercise of appellant's religion." *Sherbert, supra,* 83 S.Ct. at 1794. Though not as "clear" a case as *Sherbert,* we think that it does impose such burden.

In *Sherbert,* the claimant was forced to "choose between following the precepts of her religion and forfeiting benefits, on the one hand, or abandoning one of the precepts of her religion in order to accept work, on the other hand." *Id.* So, too, Thomas was here confronted with a similarly burdensome choice—either following the precepts of his religion and thereby forfeiting unemployment benefits, or abandoning the precepts of his religion in order to maintain his employment and thereby avoid the adverse economic consequence of benefit denial.

We concede that the burden imposed on Thomas' free exercise rights is less direct than that found in *Sherbert.* Nevertheless, "[i]f the . . . effect of a law is to impede the observance of one or all religions . . . that law is constitutionally invalid even though the burden may be characterized as being only indirect." *Braunfeld* v. *Brown* (1961) 366 U.S. 599, 81 S.Ct. 1144, 1148.

Sherbert noted that the decision therein did not establish "the existence of a constitutional right to unemployment benefits on the part of all persons whose religious convictions are the cause of their unemployment." *Id.,* 83 S.Ct. at 1797. Certainly Sherbert's conduct could

be said to have been the "cause" of her unemployment. Indeed, the Court stated that Sherbert's ineligibility "derive[d] solely" from her religious convictions. *Id.*, 83 S.Ct. at 1794. Thus, we view Justice Brennan's statements in the majority opinion as a limitation of the *Sherbert* holding, excluding from its ambit one who feigns religious objections to employment or who may be merely a malingerer seeking sanctuary and economic benefit within the protections of the Frst Amendment.[4]

It is also true that Thomas' religious beliefs were found by the Board to be the "cause" of his unemployment. Yet like Sherbert, his conduct is not "of a kind within the reach of state legislation." *Id.*, 83 S.Ct. at 1793. Indeed, the Court in *Sherbert* noted that though "certain overt acts" prompted by religious beliefs or principles are not totally free from legislative restrictions, "[t]he conduct or actions so regulated have invariably posed some substantial threat to public safety, peace of order." *Id.* As in *Sherbert,* we discern no such threat as a result of Thomas' conduct.

The purpose of the Indiana Employment Security Act is to provide benefits "to persons unemployed through no fault of their own." I.C. 22-4-1-1 (Burns Code Ed. 1974). Only in the most tortured sense may Thomas' unemployment be called his own "fault," for Thomas' only "fault" was belief in basic tenets of the Jehovah's Witnesses religion.

Thomas was specially hired into the roll foundry, to help produce non-military goods. When he was trans-

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[4] This is not to say that th ecourts may subjectively inquire into the validity or rationality of the particular religious tenet or belief, as distinguished from an inquiry into the sincerity of the individual in espousing or seeking refuge in a particular "religious" belief or conviction. See *United States* v. *Ballard* (1944) 322 U.S. 78, 64 S.Ct. 882. See also, *Sherbert, supra,* 83 S.Ct. at 1795.

ferred to the turret line and became aware of the nature of his new work, he made every effort to find different work consistent with his religious beliefs. When he found that besides the now-defunct roll foundry, Blaw-Knox produced *only* military armaments, he requested a lay-off and asked to be re-hired should the foundry re-open. This request was denied and therefore Thomas felt compelled, according to his religious beliefs, to terminate his employment. Under these facts, he had no reason to investigate the products manufactured by the departments of Blaw-Knox other than the roll foundry. We intimate no view whether in a different case, under different factual circumstances, an employee may be obligated to make inquiry concerning the nature of some or all of the prospective or possible employment duties.

The Board contends that granting benefits under the circumstances at bar would constitute a violation of the Establishment Clause. This contention is not supported by citation of authority or by argument. See Ind. Rules of Procedure, Appellate Rule 8.3(A)(7). Nor does the Board attempt to distinguish or otherwise dilute the holding of *Sherbert,* which rejected a similar argument out-of-hand and without rationale or supportive reasoning:

> "In holding as we do, plainly we are not fostering the 'establishment' of the Seventh-day Adventist religion in South Carolina, for the extension of unemployment benefits to Sabbatarians in common with Sunday worshippers reflects nothing more than the governmental obligation of neutrality in the face of religious differences, and does not represent that involvement of religious with secular institutions which it is the object of the Establishment Clause to forestall. See *School District of Abington Township* v. *Schempp,* 374 U.S. 203, 83 S.Ct. 1560." *Id.*, 83 S.Ct. at 1797.

Sherbert's treatment of this issue has not escaped criticism.[5] Indeed, it has been pointed out that the Court had failed "to face up to the dilemma posed by the conflict between the Free Excercise Clause . . . and the Establishment Clause . . ." Id., 83 S.Ct. at 1800 (Stewart, J., concurring in result).

Admittedly, the *Sherbert* decision in this respect, has some arguable increased precedential effect by having survived the fifteen years of its existence without specific judicial encroachment. We, nevertheless, feel compelled, in judicial conscience, to acknowledge the "dilemma" and to state our view of the present posture of the law in this regard.

Inviolability of conscience lies at the heart of the Free Exercise Clause,[6] while the Establishment Clause was bottomed on the notion that the federal government should be disabled from lending its power to that of the church.[7]

However, as government has broadened its scope of regulatory action, it has tended "to make majority notions into normative standards; enjoyment of benefits and sometimes avoidance of penalties are conditional upon accept

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[5] See Weiss, "Privilege, Posture and Protection: 'Religion' in the Law," 73 Yale L.J. 593, 620-623 (1964).

[6] Gianella, "Religious Liberty, Nonestablishment and Doctrinal Development. Part I: The Religious Liberty Guarantee," 80 Har. L. Rev. 1381, 1386 (1967). Indeed, "[t]he violation of a man's religion or conscience often works an exceptional harm to him which, unless justified by the most stringent social needs, constitutes a moral wrong in and of itself, far more than would the impairment of his freedoms of speech, press or assembly." Clark, "Guidelines for the Free Exercise Clause," 83 Har.L.Rev. 327, 337 (1969).

[7] Gianella, "Religious Liberty, Nonestablishment and Doctrinal Development. Part II: The Nonestablishment Principle," 81 HarL.Rev. 513, 514 (1968).

ance of [such] prevailing notions . . ."[8] Though "[t]he majority standards thus 'established' are not in common estimation religious[,] . . . for some minorities they collide painfully with religious commands and prohibitions."[9] Because the State has entered the positive realm of allocating resources and "actively structuring the social order," the question of how different religious groups and interests should be treated is fundamentally different than that viewed from the perspective of the Framers.[10]

Indeed, the Framers probably did not appreciate the inner tension between the two clauses[11] which has developed into a struggle "to find a neutral course between the two Religion clauses, both of which are cast in absolute terms, and either of which if expanded to a logical extreme, would tend to clash with the other." *Walz* v. *Tax Commission of City of New York* (1970) 307 U.S. 664, 90 S.Ct. 1409, 1411. The need to accomodate the two clauses prompted the Supreme Court to state in the *Walz* case:

> "The general principle deducible from the First Amendment and all that has been said by the Court is this: that we wil not tolerate either governmentally established religion or governmental interference with religion. Short of those expressly proscribed governmental acts there is room for play in the joints productive of a *benevolent neutrality* which will permit religious exercise to exist without sponsorship and without interference." *Id.*, 90 S.Ct. at 1411-1412. (Emphasis supplied).

The "strict neutrality" or "religion-blind" approach to the problem has been rejected. Instead the Court has apparently preferred to recognize that

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[8] Galanter, "Religious Freedoms in the United States: A Turning Point?" 1966 Wis.L.Rev. 217, 268 (1966).

[9] *Id.*

[10] Gianella, Note 7, *supra,* p. 515.

[11] Gianella, Note 6, *supra,* p. 1389.

". . . government's actions impinge on different persons in dramatically different ways, so that truly evenhanded treatment at times compels exempting those whose religious beliefs are exceptionally burdened by a challenged state action. In this *zone of required accommodation,* the theory is that only an illusory and hostile neutrality would be achieved by pursuing a religion-blind constitutional ideal."[12]

Sherbert makes clear that "benevolent neutrality" may at times require government to take affirmative steps to remove barriers to the free exercise of religion[13] by making "special provision for religious interests in order to relieve them from both direct and indirect burdens placed on the free exercise of religion by increased governmental regulation."[14] The dominance of the Free Exercise Clause has thus been explained as "the natural result of tolerating religion as broadly as possible rather than thwarting at all costs even the faintest appearance of establishment."[15]

At least one commentator has suggested that *Sherbert* is an "aberration" and should not be followed.[16] This conclusion is premised upon the Supreme Court's holdings in *United States* v. *Seeger* (1965) 380 U.S. 163, 85 S.Ct. 850 and *Welsh* v. *United States* (1970) 398 U.S. 333, 90 S.Ct. 1792. These cases dealt with the selective service law's conscientious objector provisions. The statutory exemption was limited to those persons whose status arose from "religious training and belief," which the statute defined in terms of the objector's relation to a "Supreme Being." The Court held that the exemption encompassed

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[12] Tribe, *American Constitutional Law,* §14-4, p. 821 (1978). (Emphasis in original).

[13] Comment, 10 Vill.L.Rev. 337, 341 (1965).

[14] Gianella, Note 7, *supra,* p. 518.

[15] Tribe, Note 12, *supra,* §14-7, p. 833.

[16] Ely, "Legislative and Administrative Motivation in Constitutional Law," 79 Yale L.J. 1207 (1970).

all those whose refusal to serve was based on a sincerely held moral objection. "A construction this strained," it is said, "is defensible only as a response to, and obviously was the product of, a desire to preserve the statute's constitutionality; . . . the court . . . was telling Congress that an exemption limited to religious objectors would probably violate the Establishment Clause. *A fortiori,* such an exemption should not be judicially compelled."[17] Therefore, it is argued that "[w]hatever authority *Sherbert* ever possessed has been drained by [the] *Welsh* [and *Seeger*] opinion[s]."[18]

It is readily observable that United States Supreme Court opoions dealing with the two Religion Clauses are very difficult to harmonize. However, the *Welsh* and *Seeger* opinions could themselves be seen as "aberrations," for they were written at the height of the Vietnam conflict. In any event, *Sherbert* has not been modified or overruled and remains a viable precedent to this day. Thus, *Seeger* and *Welsh* to the contrary notwithstanding, *Sherbert* must control the case before us. If the law is to be changed, it must be done by the United States Supreme Court. Our task is merely to apply the law as announced by that Court to the facts of cases involving federal constitutional questions.

Under the authority of *Sherbert,* we are compelled to hold that the disqualifying provision of I.C. 22-4-15-1 (Burns Code Ed. 1974), as it applied to Thomas, casts an impermissible burden on his First Amendment guarantee to the free exercise of his religion. Because the Board has conceded that no "compelling state interest" exists to justify such a burden, we must hold that the statute is unconstitutional as applied to Thomas.

The judgment is reversed and the cause remanded with directions that the Board enter an award not inconsistent with this opinion.

SHIELDS, J., Concurs
BUCHANAN, C.J., Dissents With Opinion.

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[17] *Id.,* p. 1320.
[18] *Id.,* p. 1322.

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In The
COURT OF APPEALS OF INDIANA
Second District

EDDIE C. THOMAS,

Appellant,

vs.

REVIEW BOARD OF THE THE INDIANA EMPLOYMENT SECURITY DIVISION, WILLIAM H. SKINNER, J. FRANK HALEY, and RALPH MILES, as Members and as constituting the Review Board of Indiana Employment Security Division,

and

BLAW-KNOX FOUNDRY & MACHINERY, INC.,

Appellees.

No. 2-1276-A-491

Appeal from the Decision of the Review Board of the Indiana Employment Security Division

BUCHANAN, C.J.

DISSENT

I must respectfully dissent.

My examination of the facts indicates to me that Eddie Thomas ((Thomas) sought and received employment at Blaw-Knox Foundry and Machinery, Inc. (Blaw-Knox) . . . a plant primarity engaged in producing weapons, which was an activity strictly forbidden by Thomas's religion.[1]

It is a finespun distinction indeed for a person with Thomas's religious convictions to justify working in a war plant because he was only involved with non-military goods. The Board found that "the claimant did not, knowing his special circumstances, seek out information concerning the Blaw-Knox company and its armament producing functions prior to his employment." The unmistakable inference is that he either knew or should have known[2] he was compromising his religious beliefs at the time he entered employment of this nature, and in my opinion, has waived his right to deny that his unemployment is due to personal reasons and not good cause.[3]

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[1] Although the Review Board found the "roll foundry"

[2] A worker might be able to fulfill his duty by *clearly* indicating possible religious prohibitions when applying for a job. However, merely indicating the denomination of his church does not fulfill that obligation.

[3] It might also be argued that Thomas was estopped from asserting his claim because he misled Blaw-Knox regarding his status as an employee. The elements of equitable estoppel as defined by *Emmco Insurance* v.

And I interpret *Sherbert* v. *Verner* (1963), 374 U.S. 398, 83 S.Ct. 1790, relied on by the majority, to be consistent with this position.

Sherbert involved a Seventh Day Adventist whose employer switched to a six-day work week two years *after* she began work. Because this required work on Saturday, a practice forbidden by her religion, she was discharged. She was unable to find other work (due to her Saturday work restriction) and finally filed for unemployment benefits. That application was denied because of her refusal to accept other suitable work, a denial which the United States Supreme Court held to violate her First Amendment rights regarding the free exercise of religion.

The *Sherbert* decision, which specifically limited itself to its facts,[4] has been severely criticized.[5] At the

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[3] (Continued)
Pashas (1967), 140 Ind. App. 544, 224 N.E.2d 314, are as follows:

(1) A representation or concealment of material facts; (2) The representation must have made with knowledge of the facts [or with inexcusable negligence in finding the facts, *Seymour Improvement Co.* v. *Viking Sprinkler Co.* (1928), 87 Ind.App. 179, 161 N.E. 389]; (3) The party to whom it was made must have been ignorant of the matter; (4) It must have been made with the intention that the other party should act upon it; (5) The other party must have been induced to act upon it.

Additionally, an intent to deceive is not a requisite to allowing estoppel, but merely that the misled party was expected to rely upon the representations. *Strafford* v. *Lane* (1890), 124 Ind. 592, 24 N.E. 683.

[4] "Our holding today is only that South Carolina may not constitutionally apply the eligibility provisions so as to constrain a worker to abandon his religious convictions regarding the day of rest." 374 U.S. at 410, 83 S.Ct. at 1797.

[5] *See* Ely, *Legislative and Administrative Motivation in Constitutional Law*, 79 YALE L.J. 1205 (1970).

time Sherbert accepted employment, her job did not contravene her religious beliefs. Only later, because of an unforeseeable change in work week by the company did a conflict arise. Thus, unlike Thomas, she did not voluntarily or carelessly place herself in a position in which she might have to choose between employment and religious principles.[6]

Similarly, the other case relied on by the majority, *Lincoln* v. *True* (1975), 408 F.Supp. 22, involved a worker who, *after* taking acceptable employment, was forced to resign by changed circumstances beyond his control.[7]

Perhaps an even more troubling aspect of the decision in this case is that in safeguarding a claimant's right to "Free Exercise" of religion under the First Amendment, the court comes dangerously close to contravening the Establishment Clause of the same amendment. As Professor Ely wrote, "The course of action thus suggested by the Court—granting exemptions only to religious persons—is extremely suspect under the establishment clause: . . . . My suggestion here, . . . , is that judicial intervention is indicated only when there is proof that the choice (of the legislature) resulted from a dessire comparatively to favor or disfavor a religion generally." 79 YALE L.J.

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[6] *Sherbert* may also be distinguished because it involves a refusal to accept new work (*See* IND. CODE 22-4-15-2) rather than "good cause for quitting," as is in the instant case (*See* IND. CODE 22-4-15-1). The majority recognizes it applied a stricter standard in allowing benefits for the latter situation. *See Gray* v. *Dobbs House, Inc.* (1978), ... Ind.App. ....., 357 N.E.2d 900.

[7] Lincoln had worked for Phillip Morris Corporation for 15 years when the ruling council for his Jehovah's Witness church decided it sinful to work with tobbaco. Faced with a choice between expulsion from his church or loss of employment, Lincoln chose to quit his job. The Kentucky court, relying upon *Sherbert*, decided that unemployment compensation could not be denied upon this basis.

at 1314, 1319. Impact alone, he concluded, should not trigger intervention.

Although the State may have a responsibility to make "special provision for religious interests in order to relieve them from both direct and indirect burdens placed on the free exercise of religion by governmental regulation," *Giannella, Religious Liberty, Nonestablishment and Doctrinal Development. Part II: The Noneestablishment Principle.,* 81 HARVARD L.REV. 513, 518 (1968), that responsibility should not be extended to relieving a burden which is essentially one of the claimant's own making. The Free Exercise clause is not that elastic.

Thus it appears to me that the First Amendment pendulum has been swung by the majority out of its natural arc in the Free Exercise area into an unnatural arc in the Establishment Area, and I would therefore affirm the Board's decision.

STATE OF INDIANA
Indianapolis, 46204

No. 2-1276A491

Eddie C. Thomas v. Review Board et al
You are hereby notified that the Court of Appeal has on this day. Appellee Petition for Rehearing Denied. Buchanan, C.J.

Please acknowledge receipt of this notice in order that our records may show that you have been notified of this action.

WITNESS my name and the seal of said Court, this 22nd day of November, 1978.

/s/ Billie R. McCullough

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Billie R. McCullough
Clerk Supreme Court and Court of Appeals

Andrea K. Knish & Janet JonNusch,
Cary Theo. L. Sendak, Atty. Genl.

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1/22/78

No. 2-1276A491

I hereby acknowledge receipt of the above notice.

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IN THE
SUPREME COURT OF INDIANA

No. 779 S 192

EDDIE C. THOMAS,

Appellant ᴀ*Claimant*ᴏ

vs.

REVIEW BOARD OF THE INDIANA EMPLOYMENT SECURITY DIVISION, William H. Skinner, J. Frank Haley, and Ralph Miles, as Members and as constituting the Review Board of Indiana Employment Security Division, and

BLAW-KNOX FOUNDRY & MACHINERY, INC.,

Appellees.

APPEAL FROM THE DECISION OF THE REVIEW BOARD OF THE INDIANA EMPLOYMENT SECURITY DIVISION ON PETITION TO TRANSFER

PIVARNIK, *J.*

This cause comes to us on a petition to transfer from the Court of Appeals. Appellant filed a claim for unemployment compensation stating that he voluntarily quit

work because of religious convictions. After an initial determination by a deputy denying his claim, a hearing was held before an appeals referee on January 27, 1976. His decision of March 3, 1976 affirmed the determination of the deputy and included Findings and Conclusions denying Eddie C. Thomas' claim for unemployment compensation because he voluntarily left his employment without good cause in connection with the work. The Employment Security Review Board affirmed the referee's decision and adopted, by reference, the referee's Findings and Conclusions. The Court of Appeals Opinion by Sullivan, J., Shields, J., concurring, reversed the judgment of the Review Board. Buchanan, C.J., dissented with opinion. *Thomas* v. *Review Board of Indiana Employment Sec.,* (1978) Ind.App., 281 N.E.2d 888.

The question presented for our review is whether the statute which made the claimant ineligible for unemployment benefits if he voluntarily left his employment without good cause in connection with the work, Ind. Code §22-4-15-1 (Burns 1974), as it applies to Thomas, violates his First Amendment guarantee to the free exercise of his religion.

The record reveals that the claimant, Eddie C. Thomas, without seeking any information about the company, applied for employment at Blaw-Knox, a plant engaged primarily in the production of weapons. He was aided in obtaining the employment by his friend, a fellow church member, who worked in the roll foundry. The general foreman of the roll foundry had agreed to hire Thomas, so when he applied he was hired directly into the roll foundry. There was no exception made for him because of his religion. On his employment application he gave his religion as Jehovah's Witnesses and listed as hobbies Bible reading and Bible study. He stated no restrictions or conditions regarding his work on his application for employment.

Thomas had worked for Blaw-Knox for nearly a year when the roll foundry closed. He was then transferred to the turret line. He stated that on the first day he worked there as a chainman hooker, he realized what type of work he was doing, and that after checking the board where job openings were posted, he finally realized that "all of Blax-Knox was armaments." He approached his friend, the other Jehovah's Witness, about the work situation and his friend said that he didn't find anything wrong with working there, and that he didn't view it as "unscriptural." The claimant then inquired of other members of the congregation and stated that they agreed to make the decision of whether or not it would be unscriptural for him to continue working there. The record does not reflect whether or not this decision was made by them. The claimant did not seek a transfer because he said there were no other departments for him to work in. He asked for a lay-off, which was denied, and on November 6, 1975, he quit after working as a chainman for nearly a month, stating that continuing to work with armaments was against his religious principles.

The fact that Eddie Thomas decided that he could not, in good conscience, work at Blaw-Knox and that he quit voluntarily, does not require that this court declare that statute disqualifying him from receiving benefits unconstitutional as it applies to him.

> "To strike down without the most critical scrutiny, legislation which imposes only an indirect burden on the exercise of religion, i.e., legislation which does not make unlawful the religious practice itself, would radically restrict the operating latitude of the legislature."

Braunfeld v. *Braun,* (1961) 366 U.S. 599, 606 81 S.Ct. 1144, 1147 6 L.Ed.2d 563-568.

Under the Indiana Employment Security Act, Ind. Code §22-4-15-1 (Burns 1974) an individual "who has voluntarily left his employment without good cause in connec-

tion with the work" is disqualified from receiving benefits.

The public policy of this State in unemployment compensation is declared in Ind. Code §22-4-1-1 (Burns 1074).

> "Economic insecurity due to unemployment is declared hereby to be a serious menace to the health, morale and welfare of the people of this state and to the maintenance of public order within this state. Protection against this great hazard of our economic life can be provided in some measure by the required and systematic accumulation of funds during periods of employment to provide benefits to the unemployed during periods of unemployment and by encouragement of desirable stable employment. The enactment of this measure to provide for payment of benefits to persons unemployed through no fault of their own, to encourage stabilization in employment, and to provide for a state employment service is, therefore, essential to public welfare; and the same is declared to be a proper exercise of the police powers of the state."

The purpose of this legislation is clear. It is to protect people from the menace of periods of unemployment and to encourage stable employment. It is not intended to facilitate changing employment or to provide relief for those who quit work voluntarily for personal reasons. Voluntary unemployment is not compensable under the purpose of the Act, which is to provide benefits for persons unemployed through no fault of their own. *Abshier* v. *Review Bd., Empl. Sec. Div.,* (1952) 122 Ind. App. 425, 430, 105 N.E.2d 902, cited in *Achenbach* v. *Review Board of Indiana Employment Security Division,* (1962) 242 Ind. 655, 179 N.E.2d 873.

Good cause which justifies voluntary termination must be job-related and objective in character. *In Geckler* v. *Review Bd. of the Ind. Emp. Sec. Div.,* (1963) 244 Ind. 473, 193 N.E.2d 357, the Indiana Supreme Court con-

sidered a claim by an employee who had voluntarily terminated her employment because of criticism by her employer when she "honestly" believed that it was impossible for her to continue in the employment. The question presented was whether such an employee would be considered to have terminated her employment for "good cause." The Court stated:

> "As a general rule, the cases hold that "good cause", which justifies the voluntary termination of employment and entitles the claimant to compensation, must be related to the employment, and thus be *objective* in character. The cases have not extended the construction of "good cause" to include purely personal and subjective reasons which are unique to the employee, but have required that such "cause" would similarly affect persons of *reasonable* and *normal* sensitivity."

Id., 244 Ind. at 477-78, 193 N.E.2d at 359.

In the area of unemployment compensation, Indiana distinguishes between statutory "good cause" for quitting work "with good cause in connection with the work", and some valid personal reason. Neutral objective standards must be met to qualify for compensation.

In *Lewis* v. *Review Board,* (1972) 152 Ind.App. 187, 282 N.E.2d 876, the Court of Appeals determined that a claimant who had left work because of failing eyesight and a desire to be with his children before he became totally blind, had not quit work with "good cause" in connection with the employment within the meaning of the Employment Act. "Good cause" justifying termination of employment and entitling an employee to compensation must objectively relate to the employment and not to reasons personal to the employee.

In *Gray* v. *Dobbs House, Inc.,* (1976) ..... Ind.App. ....., 357 N.E.2d 900, the Court of Appeals discussed the distinction between "good cause" in a failure to apply "without good cause" for available suitable work, or

to accept suitable work offered, and "good cause" involved when an employee *quits* work "without good cause in connection with the work." Parental obligations and transportation difficulties were held not to constitute "good cause" within the meaning of the claim of an employee who had voluntarily left her employment without "good cause" attributable to her employer. This means that a claimant who has terminated his employment must demonstrate that (a) his reasons for abandoning his employment were such as would impel a reasonable, prudent man to terminate under the same or similar circumstances; and (b) these reasons or causes are objectively related to the employment.

In *Gray, supra,* it was noted that although parental obligations no doubt constitute good personal reason for termination of employment, they nevertheless lack the objective nexus with employment envisioned by the Act, which is required for one to qualify for benefits. The claim that transportation was not available without unreasonable expense, and that this fact constituted good cause in connection with the employment, was also rejected by the Court of Appeals, even though it could be good cause for refusing available work under Ind. Code §22-4-15-2 (Burns 1974).

A stricter standard being applied to those who voluntarily quit work as compared to those who refuse available work seems to be in keeping with the intent of the legislature and the announced purpose of the Unemployment Compensation Act to avoid the menace of unemployment by encouraging people to maintain present jobs rather than to quit them. It allows employees to restrict or place necessary conditions upon their acceptance of new work, which would likewise encourage the maintaining of any new employment. This system appears to place responsibility for accommodation of any special considerations where it belongs, on the employee to make known to his prospective employer any special circumstances which will restrict his working. This system also avoids

a detailed speculative inquiry by employers of applicant's personal beliefs, conditions or unique situations prior to hiring and avoids requiring an employer to pay money from his fund for compensation to an employee who voluntarily or carelessly places himself in a position where he will have to choose between quitting work or his personal beliefs. The finding and conclusion that the claimant voluntarily left his employment without good cause in connection with the work is correct. Thomas' reasons for leaving his employment were unique, personal and objective. They were not objectively related to the employment.

> "If the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect. *But if the state regulates conduct by enacting a general law within its power, the purpose and effect of which is to advance the State's secular goals, the statute is valid despite its indirect burden on religious observance. . . .*"

Braunfeld, supra, 366 U.S. at 607, 81 S.Ct. at 1148, 6 L. Ed.2d at 568.

The disqualifying statute imposes only an indirect burden, if any, on claimant's free exercise of his religion. It makes no religious practice unlawful. The State has enacted a general law, within their power, the purpose and effect of which is to advance the State's secular goals. Such a statute is valid.

Since Thomas is challenging the neutral disqualifying provisions of our statutes as they apply to him, we believe it is necessary to set out his statement of his ideas and beliefs and his objections to his continuing work. "A determination of what is a 'religious' belief or practice entitled to constitutional protection may present a most delicate question." A personal philosophical choice rather than a religious choice, does not rise to the level

of a first amendment claim of religious expression. *Wisconsin* v. *Yoder,* (1971) 406 U.S. 205, 215-16, 92 S.Ct. 1526, 1533, 32 L.Ed.2d 15, 25.

After the claimant was transferred from the roll foundry to the turret line he did not ask for another transfer. The hearing referee questioned him as follows:

"Q. Okay, because at that point you realized the entire plant was an armaments production.
A. The entire . . .that's correct.
Q. Engaged in armament production. All right.
A. That's correct.
Q. Which is against your religion beliefs, right?
A. That's true.
Q. To contribute to the armament production of the world.
A. That's correct.
Q. Is that correct?
A. That's correct.
Q. All right. Now, at the time you were working at the roll foundry you didn't realize that, right?
A. That . . .
Q. That it was part of an armaments procedure?
A. No, I did not."

This exchange indicates the entire plant, including the roll foundry, was part of an armaments procedure. Nevertheless, the claimant stated that he would have returned to the roll foundry to work. In an attempt to clarify claimant's position the referee asked:

"Q. Mr. Thomas, let me ask you this, getting . . . at the (inaudible) your convictions a little bit. . .
A. Certainly.
Q. What if you were working for United States Steel or Inland Steel who produced steed, the raw product necessary for the production of any kind of a tank. . .
A. Mm-hum.

Q. And you found that that steel was being shipped to whoever . . .
A. Yes, for . . . for . . .
Q. . . . strictly for armaments purpose.
A. Yeah, I understand, strictly for armaments. Then I could continue to . . . to work for U.S. Steel or whatever steel maker or raw products or the . . . whatever producer it might be. I could still scripturally, you know, cause see the work for the . . . for the company . . . because it would . . . it would . . . it would . . . I would not be a direct party to whoever they shipped it to, you see, would not be. . . would not be chargeable in . . . according to my conscience to me, you know. But . . . .
Q. Okay, is it the social atmosphere that makes a tank or is it the people? I don't know. What's the difference whether you work for the steel producer that produces the steel or the coal company that produces the coal or the . . .
A. There . . . there you are.
Q. Or the . . . the company . . . the chemical company that produces the saltpetre.
A. Or the actual . . . or what have you, you know, would . . . the . . . the company that. . . .
Q. You . . . your . . . your expression is then that you . . . finally you have to make a choice.
A. Yeah, you have . . .
Q. And then when it comes to actually producing the tank itself, hammering it out; that you will not do that.
A. That's right, that's right. When I . . . when I'm daily faced with the knowledge that these are tanks . . . that these are tanks and . . . these was a couple other occurrences that really imprinted on my mind exactly where I was working, durin' those three or four weeks that I was working in . . . within armaments. There was what they call it a bomb scare on two different occasions where we had to evacuate the work area. So . . .

Q. Go ahead.
A. I really could not, you know, conscientiously continue to to work with armaments. It would be against all of the . . . the . . . religious principles that . . . that I have come to learn and appreciate except up to that . . . up to this point."

The hearing referee concluded that the claimant, Eddie C. Thomas had left work for religious reasons.

The Review Board accepted this conclusion when it adopted the referee's Findings and Conclusions which are set out in the Court of Appeals opinion. The Court of Appeals, under the authority of *Sherbert* v. *Verner,* (1963) 473 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 held the disqualifying statute, Ind. Code §22-4-15-1 (Burns 1974) to be unconstitutional as casting an impermissible burden upon Thomas' First Amendment guarantee to the free exercise of his religion. We disagree, grant transfer and affirm the Review Board's denial of unemployment benefits to the claimant.

Initially, we observe that there are significant differences between Thomas' situation and that involved in *Sherbert, supra.* In *Sherbert,* a Seventh Day Adventist was disqualified from receiving unemployment compensation when her refusal to work Saturdays, her Sabbath, caused employers to refuse to hire her and resulted in her being disallowed benefits because of her failure to accept suitable employment. The United States Supreme Court emphasized the general discriminatory effect of such a disqualification on Sabbatarians as compared to Sunday worshippers for whom it was provided that no employee would jeopardize seniority nor be discriminated against in any manner for refusal to work on Sunday.

The Court, in *Sherbert,* was careful to state that they did not declare the existence of a constitutional right to unemployment benefits on the part of all persons whose religious convictions are the cause of their unemployment, and specifically limited their holding as follows:

"Our holding today is only that South Carolina may not constitutionally apply the eligibility provi-

> sions so as to constrain a worker to abandon his religious convictions respecting a day of rest.

Id., 374 U.S. at 410, 83 S.Ct. at 1797, 10 L.Ed.3rd at 974. The Court determined that a burden was placed on the free exercise of Sherbert's religion when her ineligibility for benefits derived "solely from the practice of her religion" and that the "pressure upon her to forego that practice was unmistakable" by forcing her to choose between following the precepts of her religion, remaining unemployed and forfeiting benefits or abandoning one of the precepts of her religion in order to accept work. This clear-cut choice of working on one's Sabbath or being unable to work at all was presented and the court found it to be an unconstitutional burden upon Sherbert's right to the free exercise of her religion.

In *Lincoln* v. *True,* (W.D. Ky. 1975) 408 F.Supp. 22, also relied upon by Thomas, the claimant voluntarily terminated her employment of 21 years with a tobacco company because the elders of the Jehovah's Witnesses informed her that anyone using or working with tobacco products was violating the Will of God and unless she resigned she would be expelled from the fellowship of Jehovah's Witnesses. The District Court cited *Sherbert* as controlling and held that the denial of benefits violated the claimant's First Amendment right to the free exercise of her religion and ordered benefits to be paid.

The Court of Appeals opinions in *Thomas,* Ind.App., 381 N.E.2d 888, note the distinction in Indiana discussed previously in this opinion, of the standards involved in a voluntary quit case as compared to an availability for work case and the facts that distinguish *Sherbert* from *Lincoln.* We feel *Lincoln, supra,* improperly interpreted *Sherbert* to apply to Lincoln's situation and therefore do not rely on it here.

Thomas sought out work with Blaw-Knox and was hired. It appears from the record that all of Blaw-Knox was involved in the production of armaments. Thomas

worked in the roll foundry and when transferred, worked on the turret line before he voluntarily quit his employment. He also expressed a willingness to return to work in the roll foundry if possible. It is not clear whether Thomas was voicing his objection to continuing work as a personal conviction, or if he were expecting his fellow church members to make this decision for him. It is not apparent that such a decision was ever made. There is no evidence that there was any pressure placed on Thomas, or on his fellow Jehovah's Witness, who continued to work at Blaw-Knox, to quit work. In Thomas' own words he was struggling to determine his position in this matter. He was uncertain as to his precise beliefs and he was concerned about a bomb scare in the plant. This expression of his dilemma does not equal a violation of the kind of cardinal religious tenet at stake in *Sherbert,* involving work on one's Sabbath and the pressure to violate religious precepts or not to work at all.

Here, although the claimant's reasons for quitting work are described as religious, it is unclear what his belief was, and what the religious basis of his belief was. This situation is clearly distinguishable from our recent case, *Bureau of Motor Vehicles* v. *Pentecostal House of Prayer, Inc.,* (1978) ..... Ind. ....., 380 N.E.2d 1225, in which the Indiana Supreme Court fouund Ind. Code §9-1-4-37(b) (Burns Supp. 1977) to be an unconstitutional infringement of the Free Exercise clause of the First Amendment of the United States Constitution and of Art. 1 §2 of the Indiana Constitution. That case involved a photograph requirement for the issuance of driver's license. It was clearly shown that the religious beliefs of the members were derived from a literal reading of the Bible and that the photographic requirement forced them to choose between violating an important religious principle or surrendering their driving privileges. It was held that to require a person to violate a cardinal tenet of his religion effectively penalized the free exercise of constitutional liberties.

In the area of free exercise claims, some broad areas of difference are apparent. The claims of those persons who refuse to perform positive action established by the state are different from the claims of those from whom benefits have been withheld. Claimant's objection to the enforcement of the statute in question as it applies to him is that he will be denied unemployment benefits because he voluntarily quit work for religious reasons. Thomas is not required by statute to violate a cardinal tenet of his religion. Our review of the record here reveals that the basis of claimant's belief is unclear. The precise belief is not articulated. He does not show how the exercise of his religious beliefs is hampered. He is not prevented from seeking, being available for, or accepting new work. He is not deprived of benefits extended to others. *Sherbert* does not require that benefits be extended to this claimant. To so require would be an improper expansion of that holding.

In addition, in considering the basis for awarding or denying unemployment compensation we are also presented with the dilemma noted in the Court of Appeals opinions of the conflict between the Free Exercise Clause under the First Amendment and the Establishment Clause of the First Amendment.

As stated by the United States Supreme Court in *Gillette* v. *United States,* (1971) 401 U.S. 437, 449, 91 S.Ct. 828, 836, 28 L.Ed.2d 168, 180-81:

> "As a general matter it is surely true that the Establishment Clause prohibits government from abandoning secular purposes in order to put an imprimatur on one religion *or on religion as such,* or to favor the adherents of any sect or religious organizations. . . . [T]he Establishment Clause stands at least for the proposition that when government activities touch on the religious sphere, *they must be secular in purpose, evenhanded in operation and neutral in primary impact.*" (emphasis added)

Thomas does not ask that benefits be extended to him as they are to others, but that they be extended to him when they are denied to others. To hold that an employee who voluntarily quits work for personal reasons and personal beliefs which can somehow be described as religious beliefs, must be allowed benefits while other employees who voluntarily quit work for valid personal reasons or beliefs which are not "religious" are denied benefits, would violate the Establishment Clause of the First Amendment.

Transfer is granted, and the Court of Appeals opinion is vacated. The Board's decision that the claimant voluntarily left work without good cause in connection with the work and is not entitled to benefits is affirmed.
GIVAN, *C. J.*, and PRENTICE, *J.*, *concur.*
HUNTER, *J.*, dissents with opinion.
DEBRULER, *J.*, dissents with opinion.

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IN THE

SUPREME COURT OF INDIANA

EDDIE S. THOMAS,

Appellant (Claimant),

vs.

REVIEW BOARD OF THE INDIANA EMPLOYMENT SECURITY DIVISION, William H. Skinner, J. Frank Haley, and Ralph Miles, as Members and as constituting the Review Board of Indiana Employment Security Division, and

BLAW-KNOX FOUNDRY & MACHINERY, INC.,

Appellees.

Supreme Court
No. 779 S 192
Court of Appeals
No. 2-1276-A-491
(381 N.E. 2d 888)

APPEAL FROM THE DECISION OF THE REVIEW BOARD OF THE INDIANA EMPLOYMENT SECURITY DIVISION ON PETITION TO TRANSFER

HUNTER, *J.*—Dissenting

In order to resolve the issue in the case at bar, it is not necessary to delve into Indiana law, including prior decisions of this Court and the Court of Appeals, regarding what does or does not constitute "good cause in connection with the work," Ind. Code § 22-4-15-1 (Burns Supp. 1978), for one voluntarily terminating his employment. Respondent on transfer is not complaining that petitioner has acted improperly under the statute. Rather, the issue here is whether respondent, Eddie C. Thomas, was properly disqualified for unemployment benefits in light of his claim that this disqualification violates his First Amendment guarantee of free exercise of his religion.

The case of *Sherbert* v. *Verner,* (1963) 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965, would appear to be controlling here. In that case a Seventh-Day Adventist was fired by her employer and thereafter refused other employment because of her refusal to work on Saturday, the Sabbath day of her faith. The South Carolina Employment Security Commission refused Sherbert unemployment compensation because of her refusal to work Saturdays.

In the instant case, Thomas, a Jehovah's Witness, quit his job with Blaw-Knox Foundry & Machinery, Inc. shortly after being transferred from the roll foundry to the turret line, an area of the plant directly involved in armaments manufacture. The *referee,* whose decision was adopted by the Indiana Employment Security Review Board, found that Thomas "did quit due to religious convictions." *Thomas* v. *Review Board of Ind. Emp. Sec. Div.,* (1978) ..... Ind. App. ..... 381 N.E. 2d 888, 890.

The majority opinion observes "significant differences" between Thomas's situation and Adell Sherbert's situation. The majority correctly notes the United States Supreme Court emphasized the general discriminatory effect of the disqualification in *Sherbert* v. *Verner, supra,*

because South Carolina expressly saved "the Sunday worshipper from having to make the kind of choice which we here hold infringes the Sabbatarian's religious liberty." 374 U.S. at 406, 83 S.Ct. 1795, 10 L. Ed. 2d at 971. To overemphasize this discriminatory factor is to miss the import of the *Sherbert* decision.

The *Sherbert* case did not turn on the discriminatory effect of the disqualification. The United States Supreme Court has noted that the *Sherbert*

> "decision turned upon the fact that '[t]he ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand.' " [citation omitted.] *McDaniel* v. *Party,* 435 U.S. 618, 633, 98 S. Ct. 122, 1331, 55 L. Ed. 2d 593, 605. (Separate opinion by Brennan, J., in which Marshall, J., joined.)

The District Court in *Lincoln* v. *True,* (W. D. Ky. 1975) 408 F.Supp.22 made a similar conclusion and it is my belief that that case was properly decided. Thomas, Adell Sherbert and Ethel Lincoln, a Jehovah's Witness who quit her job with a tobacco company, where she had worked for twenty-one years, because of her religious convictions, were all forced to the same choice.

An inquiry by this Court into whether Thomas's convictions are religious would be improper in this case. As stated above, the facts as found by the referee, and as adopted by the Review Board, indicate that Thomas did indeed quit his job due to his religious convictions. Furthermore, this Court should not pick apart a religious adherent's beliefs because he is "struggling" with his position or because his beliefs are not eloquently stated. Neither should we distinguish between literal and interpretive readings of religious scriptures nor distinguish among so-called "cardinal tenets" of various religions.

I am cognizant of the limited nature of the decision in *Sherbert* v. *Verner, supra.*

> "Our holding today is only that South Carolina may not constitutionally apply the eligibility provisions so as to constrain a worker to abandon his religious convictions respecting the day of rest." 374 U.S. at 410, 83 S.Ct. at 1797, 10 L. Ed. 2d at 974.

In fact the high Court said:

> "Nor do we, by our decision today, declare the existence of a constitutional right to unemployment benefits on the part of all persons whose religious convictions are the cause of their unemployment." 374 U.S. at 409-10, 83 S.Ct. at 1797, 10 L. Ed. 2d at 974.

But in their next sentence the Court withdrew from that broad disclaimer.

> "This is not a case in which an employee's religious convictions serve to make him a nonproductive member of society." 374 U.S. at 410, 83 S.Ct. at 1797, 10 L. Ed. 2d at 974.

Like Adell Sherbert, Eddie Thomas was willing to work in a job which would not conflict with his religious convictions. He stated that he was willing to return to the Blaw-Knox roll foundry, which had been closed down precipitating his transfer. A reviewing court cannot say when and in what job a religious adherent compromises his beliefs as the dissent to the Court of Appeals decision in *Thomas, supra,* suggests. The fact that Thomas is willing to return to a neutral position at Blaw Knox no more diminishes his religious convictions than his willingness to work at another level in the military-industrial chain, such as a raw material supplier. Thus Thomas's religious convictions do not "serve to make him a nonproductive member of society." *Sherbert, supra,* 374 U.S. at 410, 83 S. Ct. at 1797, 10 L. Ed. 2d at 974. *We are dealing here with a person's action pursuant to his deligious beliefs, and cannot properly tell a litigant that he has misinterpreted his own beliefs.*

Comments in the dissent to the Court of Appeals decision bring to mind Isaac Backus's admonition regarding religious intolerance in colonial Massachusetts in his comprehensive Appeal to the Public for Religious Liberty, written in 1773, a time of debate which fashioned our religious liberties.

> "Yes, some minorities are tolerated in Massachusetts; but some are not, and the procedure of deciding which are and which are not worthy of this privilege gives to a group of civil magistrates—a body which, since each man must speak for himself before God, cannot in the nature of things represent anyone in matters of religion—the power of passing judgment on 'the *springs* of their neighbors' actions.' You are condemned, he told the Massachusetts magistrates, out of your own mouths, for you say that England cannot in right tax beyond her own domain: "have we not as good right to say you do the *same thing,* and so that wherein you judge others you condemn yourselves?' " [Emphasis in original.][1]

Theologians have made similar statements indicating that living pursuant to religious convictions is a matter of individual conscience and not a response to objective, doctrinaire theory on which strangers—be they church elders, administrative referees or judge—may pass judgment.

> "[Religious] freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that in religious matters no one is to be forced to act in a mainer contrary to his own conscience; *nor is he to be impeded from acting according to his own conscience,* whether privately or publicly, whether

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[1] Paraphrased in B. Bailyn, *The Ideological Origins of the American Revolution,* Belknap Press, Cambridge, Mass. 1972, p. 266-267.

alone or in association with others, within due limits." [Emphasis added.][2]

"A sense of dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man, and the demand is increasingly made that men *should act on their own judgment,* enjoying and making use of a responsible freedom, not driven by coercion but motivated by a sense of duty." [Emphasis added.][3]

An individual in this nation should be free to seek religious truth and duty in a manner which accords with his or her nature and cannot be denied the benefits of public welfare legislation thereby.

The Court of Appeals decision in this case in no way fosters the establishment of the Jehovah's Witnesses religion in this state. It merely reflects "the governmental obligation of neutrality in the face of religious differences." *Sherbert* v. *Verner, supra,* 374 U.S. at 309, 83 S. Ct. at 1797, 10 L. Ed. 2d at 974. The dissent in *Thomas, supra,* and the majority opinion here raise the same argument that was raised by Justice Harlan in his dissent in *Sherbert, supra,* which was specifically rejected by Justice Brennan's majority opinion.

For the foregoing reasons, I believe the opinion of the Court of Appeals should stand and would, therefore, deny transfer.

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[2] *Dignitatis Humanae,* No. 2, Found in A.F.C. DeAlbornoz, *Religious Liberty Sheed & Ward New York,* 1967 p. 12.

[3] *Dignitatis Humanae,* No. 1, DeAlbornoz, *supra,* p. 15.

No. 779 S 192
(Court of Appeals No. 2-1276-A-491)

IN THE

SUPREME COURT OF INDIANA

EDDIE C. THOMAS,

Appellant (Claimant),

vs.

REVIEW BOARD OF THE INDIANA EMPLOYMENT SECURITY DIVISION, William H. Skinner, J. Frank Haley, and Ralph Miles, as Member and as constituting the Review Board of Indiana Employment Security Division, and

BLAW-KNOX FOUNDRY & MACHINERY, INC.,

Appellees.

APPEAL FROM THE DECISION OF THE REVIEW BOARD OF THE INDIANA EMPLOYMENT SECURITY DIVISION ON PETITION TO TRANSFER

DONALD H. HUNTER, *Justice*

Dissenting Opinion

Clerk
Reporter
West
Bobbs-Merrill

In The

SUPREME COURT OF INDIANA

EDDIE C. THOMAS,

Appellant,

vs.

REVIEW BOARD OF THE INDIANA EMPLOYMENT SECURITY DIVISION, and BLAW-KNOX FOUNDRY & MACHINERY, INC.,

Appellees.

No. 77 S 192

ON PETITION TO TRANSFER

DeBRULER, J. - Dissenting

Every working person who is covered by the Indiana Employment Security Act has it in his mind that he can expect either a paycheck *or* a benefit check to live on. Adell Sherbert's decision to refuse to accept a new job which would have required her to work on Saturdays, the day she and the church she belonged to regarded as a day to be set aside for rest and worship, removed her from the class having this dual expectancy. Eddie Thomas' decision to refuse to work at a new job for his employer which required him to participate directly in fabricating army tanks, because he and the church to which he belonged regarded such work as making one a direct party with those who would ultimately use the tanks, effectively removed him from the same class. Both were disqualified for benefits because of conduct dictated by their religious beliefs. The United States Supreme Court in *Sherbert* v. *Verner,* (1963) 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965, held that Sherbert's disqualification as a beneficiary represented an abridgment of her right to the free exercise of her religion secured under the Free Exercise Clause of the First Amendment through the Fourteenth Amendment. I find no reason to conclude that Thomas should not be accorded the same constitutional protection for the free exercise of his religious be-

lief. Salient here is the limitation which the Supreme Court placed upon its holding in *Sherbert* in the following passage:

> "Nor do we, by our decision today, declare the existence of a constitutional right to unemployment benefits on the part of all persons whose religious convictions are the cause of their unemployment. This is not a case in which an employee's religious convictions serve to make him a nonproductive member of society." 374 U.S. at 409-10, 83 S.Ct. at 1797.

Both Sherbert and Thomas following the conduct dictated by their religious beliefs, remained ready, willing and available to work at a multitude of jobs. Sherbert was available to work at jobs which did not require Saturday attendance. Thomas was available to work at jobs which did not involve the production of armaments. Both were only temporarily in need of unemployment compensation and therefore clearly come under the Constitution's protective umbrella.

STATE OF INDIANA
Indianapolis, 46204
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No. 779S192

Eddie C. Thomas v. Review Board of the Ind. Employ. Sec. Div.

You are hereby notified that the Supreme Court has on this day Denied Appellant's Petition for Rehearing. GIVAN, *C.J.*

GIVAN, *C.J.*, *Prentice, J.*, concur
HUNTER and DEBRULER, *JJ.*, dissents

Please acknowledge receipt of this notice in order that our records may show that you have been notified of this action.

WITNESS my name and the seal of said Court, this 20th day of September, 1979.

/s/ Billie R. McCULLOUGH
Billie R. McCULLOUGH

.....
Clerk Supreme Court and Court of *Appeals*